

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
) CASE NO. 10-93904-BHL-11
EASTERN LIVESTOCK CO., LLC)
)
DEBTOR)

RESPONSE TO TRUSTEE’S OBJECTION TO CLAIM NO. 42

Comes now Capitol Indemnity Corporation (“CIC”), by counsel, and respectfully shows the court as follows:

1. On or about the 19th day of April, 2013, the Trustee filed his Objection to Claim 42 and Notice of Response Deadline (the “Objection”); Doc. No. 2096.
2. Pursuant to the terms of the Objection, any Response is to be filed within thirty (30) days of service (the “Response Deadline”).
3. CIC respectfully submits this Response within the time frame called for in the Response Deadline.
4. CIC has an unsecured claim (Claim # 42) in this proceeding in the sum of \$875,000.00 (“Claim”) on account of CIC’s funding of certain bond obligations, in full, for bond XXX636 issued on Debtor’s behalf (“Bond”). A copy of the Bond was submitted as a part of CIC’s Claim.
5. Debtor was a cattle brokerage company, and the Bond was issued on Debtor’s behalf pursuant to the Packers and Stockyards Act. The revised penal amount of the Bond was \$875,000.00.
6. Immediately prior to the filing of above captioned bankruptcy case (“Case”), Debtor purchased cattle from multiple cattle producers (“Producers”) with checks drawn on

Debtor's bank account ("Account"). Debtor did not have sufficient funds in its Account to fund these checks ("NSF Checks") and the NSF Checks were returned to the Producers, unfunded. Therefore, Debtor received the cattle from the Producers, and, in return, these Producers, who should have been paid for their cattle, received nothing, because of the NSF Checks. As a result of the NSF Checks, the Producers became unsecured creditors of Debtor herein ("Producers Claims").

7. Shortly after issuing the NSF Checks, Debtor ceased operations and did not repay the NSF Checks. Primarily because of these specific events, the USDA Grain Inspection, Packers and Stockyards Administration ("USDA") made demand on CIC for payment of the Bond ("Demand").

8. As a result of the Demand, CIC was required to pay the full penal amount of the Bond, which was in the amount of \$875,000.00 ("Payment"). With this Payment, CIC fulfilled its obligations pursuant to the Bond, and there are no further amounts due and owing or which may be collected from CIC pursuant to the Bond.

9. The Trustee of Debtor herein, Mr. James Knauer, was also appointed as the trustee for the Bond by the USDA. Therefore, CIC made the Payment to the Trustee, in his capacity as trustee for the Bond. The Trustee then disbursed or will disburse CIC's Payment directly to the Producers for payment of the Producers Claims in this Case.

10. As a result of the Payment, CIC paid its obligation on the Bond, in full, and is no longer a co-debtor with Debtor herein.

11. The only amount included in CIC's Claim is the Bond Payment in the amount of \$875,000.00.

12. Pursuant to 11 USC § 509, CIC's Claim should be allowed. 11 USC § 509(a) states as follows, "Except as provided in subsection (b) or (c) of this section, an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment."

13. CIC has paid all amounts due and owing pursuant to the Bond. Based on this section of the Bankruptcy Code, CIC is entitled to be subrogated to the rights of the Producers, in the amount of CIC's Bond Payment made to the Trustee towards the Producers Claims. Under § 509(a), CIC now stands in the shoes of these Producers and may assert an unsecured claim herein in the amount of \$875,000.00. The Producers would have been unsecured creditors of Debtor, and, as such, CIC is an unsecured creditor of Debtor as stated in its Claim.

14. In the Objection, the Trustee primarily argues, pursuant to 11 USC § 509(c), that because the entire class of unsecured creditors in this Case will not be paid, in full, CIC's Claim should be subordinated to all the unsecured creditors herein. (Objection ¶ 11.) There is nothing in 11 USC § 509 that requires all unsecured creditors to be paid, in full, before CIC's Claim may be allowed, as is, and the Trustee has no basis to subordinate CIC's claim under § 509(c). In fact, to the contrary, § 509(a) specifically allows CIC to assert its Claim herein.

15. Moreover, as a result of CIC's Payment on the Bond, CIC has provided a considerable benefit to this estate in that the Payment made by CIC directly reduced the amount of claims made by other unsecured creditors of this Debtor, specifically, the Producers. If CIC's Claim were now subordinated to the unsecured creditors, the other unsecured creditors would receive far more than they would have received had CIC not paid the Bond Payment. As such, other unsecured creditors in this proceeding are not prejudiced by the allowance of CIC's Claim, but CIC will be prejudiced if its Claim is subordinated.

16. Subordinating CIC's Claim is inequitable, contrary to the language of § 509, and contrary to the overall purpose of the Bankruptcy Code. CIC paid the full amount due on to the Bond, and CIC is now entitled to its pro rata share due unsecured creditors in this Case.

17. The Trustee also objects to CIC's Claim and requests it be reduced, "to the extent it has been reduced by payments from alternate sources." (Objection ¶ 9.) While CIC acknowledges that it is pursuing other obligors, pursuant to an indemnification agreement ("Agreement"), for payment of the amount due CIC pursuant to its Claim, CIC has no reasonable expectation that its Claim will be satisfied or that anything but a small fraction of the Claim is likely to be recovered, pursuant to the Agreement. Further, on information and belief, some of the other parties to the Agreement have been found guilty of crimes and incarcerated as a result of certain activities which lead to the filing of this bankruptcy case. Such individuals are not likely to pay any amounts towards CIC's Claim. Others parties to the Agreement have no available funds to make any payment pursuant to the Agreement.

WHEREFORE, Capitol Indemnity Corporation, by counsel, respectfully submits its Response in opposition to the Trustee's Objection, requests that the Trustee's Objection be denied, that the unsecured claim of Capitol Indemnity Corporation be allowed as filed, and for all other relief just and proper in the premises.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 13, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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